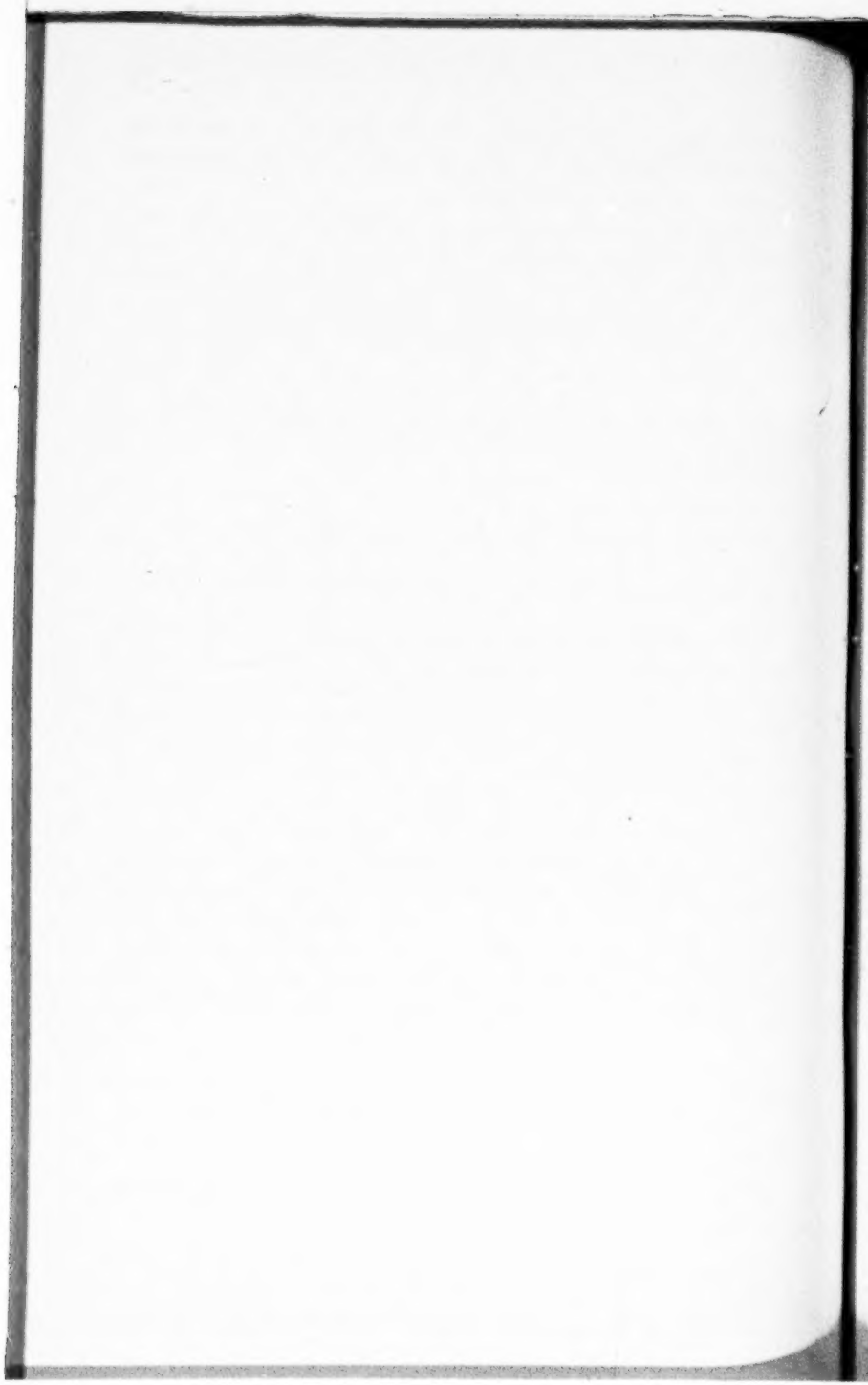

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CHARLES ELMORE

Supreme Court of the United States

October Term, 1932.

No. 304.

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners-Appellants,

against

IRVING TRUST COMPANY, as Trustee in Bankruptcy of EXPERIMENTER PUBLISHING CO., INC.,

Respondent-Appellee.

MOTION TO ADVANCE.

JOHN J. BENNETT, JR.,
Attorney General of the State of New York,
Capitol, Albany, New York.

ROBERT P. BEYER,
Deputy Assistant Attorney General
Of counsel for Petitioners-Appellants,
80 Centre Street, New York City, N. Y.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

Supreme Court of the United States

THE PEOPLE OF THE STATE OF NEW YORK, *Petitioners-Appellants,* against IRVING TRUST COMPANY, as Trustee in Bankruptcy of EXPERIMENTER PUBLISHING CO., INC., *Respondent-Appellee.*	October Term, A. D., 1932. No. 304.

Notice.

To: S. John Block,
Counsel for Appellee,
225 Broadway, New York City.

SIR:

PLEASE TAKE NOTICE that on the 21st day of November, 1932, or as soon thereafter as counsel can be heard, the within motion to advance will be submitted to the Supreme Court of the United States in the City of Washington, District of Columbia.

Printed copy of the motion to advance is served upon you herewith.

ROBERT P. BEYER,
Counsel for Appellants,
80 Centre Street,
Borough of Manhattan,
City of New York.

Service accepted this 29th day of October, 1932.

S. JOHN BLOCK,
Counsel for Appellee.

Motion to Advance.

SUPREME COURT OF THE UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, *Petitioners-Appellants,* against IRVING TRUST COMPANY, as Trustee in Bankruptcy of EXPERIMENTER PUBLISHING CO., INC., *Respondent-Appellee.*	October Term, A. D., 1932. No. 304.

Now comes The People of the State of New York, petitioners-appellants, and move this Honorable Court that this cause be advanced for early hearing and placed upon the summary docket of this Court, and in support of its motion makes the following brief statement of the matter involved and the reasons relied upon for the advancement:

1. That this matter comes before this Court upon the allowance of an application by the People of the State of New York for a writ of certiorari to review the determination of the United States Circuit Court of Appeals for the Second Circuit, barring notices of claim filed by the petitioners in a bankruptcy proceeding after the time limited for

filing a claim by a bar order issued by a referee in bankruptcy but before the final liquidation of the bankrupt estate.

2. In granting the petition for certiorari, this Court has consented to pass upon and determine the following three questions, which are involved for review and which, as stated in the petition for the writ of certiorari, are as follows:

> Question No. 1—Has the United States District Court or a referee in bankruptcy the constitutional power and authority to make an order in a bankruptcy proceeding requiring a sovereign state to file tax claims with the referee in bankruptcy within a prescribed definite period or be thereafter barred from filing any such claims?
>
> Question No. 2—Where a referee in bankruptcy makes an order requiring a state to file any tax claim within sixty days after the service of a copy of said order, and where the State files a claim for additional taxes one month and four days after the expiration of the time limited by said order, which said claim was permitted to remain on file with the referee for a period of one year and five months from the date of filing before any motion was made to expunge the same because not filed in time, has the referee in bankruptcy the constitutional right and authority to grant a motion to expunge said claim because not filed within the time prescribed in said order in a case where there are sufficient undistributed assets of said bankrupt to pay the said claim in full, upon the same being established as to amount by the referee in bankruptcy.
>
> Question No. 3—In a case where a referee in bankruptcy makes an order requiring a state to file any tax claim within a period of sixty days from the date of service of said order; where the state files a claim for possible increased franchise taxes, determinable as to amount on a reaudit of income for the tax years in question made in connection with the claims for additional tax liabilities for the same year filed by the United States Government, said claim being filed by

the State one month and four days after the expiration of the time limited by said order; where said claim is permitted to remain on file with the referee in bankruptcy for a period of one year and five months before any motion is made to expunge same, has the referee in bankruptcy the constitutional power and authority to grant a motion to expunge said claim because not filed within the period prescribed in said order, without making a determination as to the amount of income earned by the bankrupt in the tax years in question in connection with additional tax claims filed by the United States Government, and without, by this method, determining the true amount of taxes due by the bankrupt to the State, in a case where there are undistributed assets of the bankrupt more than sufficient to pay such tax liability as thus adjudicated to the State in full?

3. That the early and final determination of the questions involved in this case is not only of paramount public importance to the administration of the tax systems of the various states, but also in the proper administration of the bankruptcy system in the declaration of the duties of trustees and referees in bankruptcy with respect to the filing of, determination, allowance and payment of tax obligations due by a bankrupt to either a State or the National Government. The questions involved arise in all bankruptcy proceedings in which the bankrupt is a corporation. They are of particular importance therein inasmuch as the validity and legality of so-called bar orders, made in accordance with Court rule, are involved. In these orders it is attempted to limit the time within which a State or the National Government is required to file a claim for a tax liability or be thereafter barred from presenting such claim. The petitioners-appellants claim before this Court that such orders are of no binding effect upon a sovereign state, particularly in a case where final distribution of the assets of the bankrupt in the hands of the trustee has not

been made. It is therefore of vital public importance that the questions involved be determined by this Court as speedily as possible so that a proper and final guide for administration of corporate assets in bankruptcy may be obtained.

4. A more detailed statement of the case is contained in the petition of petitioners-appellants on file in this cause and on which this Court has issued a writ of certiorari.

5. That this is not a cause which will require any extended argument as all the facts are practically conceded and simple in nature, with only the necessity of a brief argument as to the law to be applied in the correct determination of this cause.

6. If this Honorable Court will place this cause upon the summary docket for hearing, the petitioners submit with confidence that this Court will reverse the Circuit Court of the United States for the Second Circuit and definitely establish the true rule and guide for corporation bankruptcy proceedings in receiving, adjudicating, allowing and paying claims due on account of State and Federal taxes,

WHEREFORE, People of the State of New York, petitioners-appellants, pray that the cause be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

PEOPLE OF THE STATE OF NEW YORK,
Petitioners-Appellants.

ROBERT P. BEYER,
Counsel for Petitioners.